its use.[12] And so also it is unreasonable regulation to compel a carrier to extend credit to another carrier by a system of interchangeable mileage.[13] In the principal case no provisions were made for apportioning the charge collected for the through service or for adjusting the differences in the number of transfers accepted by the two companies. It cannot be assumed that precisely the same number of passengers will be carried on transfer by each company.[14] Therefore the company carrying the larger number will be required to carry some passengers free. Moreover, each company is subjected to the danger that the difference will be large.[15] It is submitted that this is unreasonable regulation.[16] In conclusion it must be borne in mind that to regulate is to control, not change the undertaking. The undertaking of a public service company is to exchange service for money. Such a statute as this essentially changes the undertaking, and therefore it is in no true sense a regulation. It cannot be urged, therefore, in defense of the statute, that the corporation still makes a fair profit.

RECENT CASES.

BURDEN OF PROOF — PROOF OF MAIN ISSUE QUANTUM OF PROOF UNDER PENAL STATUTES. — A statute provided for the punishment of the importation of contract laborers by means of a civil action for a penalty, at the suit of the United States or an informer. *Held*, that a violation need only be established by a preponderance of evidence. *United States* v. *Regan*, Supreme Court, Jan. 5, 1914.

The court reverses a decision in the Circuit Court which required proof beyond reasonable doubt on the ground that the act forbidden was called a misdemeanor by the statute. The decision of the lower court was discussed and disapproved in 27 HARV. L. REV. 77.

BURGLARY — BREAKING — OPENING A DOOR ALREADY AJAR. — The defendant found the door of a freight car partly open, and opened it further to effect an entry for the purpose of larceny. By statute the common-law definition of burglary includes breaking into railroad-cars. Vt. Statute, 1909, § 5751. *Held*, that there was a sufficient breaking to satisfy an information for burglary. *State* v. *Lapoint*, 88 Atl. 523 (Vt.).

The older cases uniformly held that raising a window or pushing a door, already partly open, was not such a breaking as to make the entry a burglarious one. *Rex* v. *Smith*, 1 Moody C. C. 178; *Rose* v. *Commonwealth*, 19 Ky. L. Rep. 272, 40 S. W. 245; *Commonwealth* v. *Strupney*, 105 Mass. 588; *State* v. *Wilson*, 1 N. J. L. 502. Blackstone supports this, reasoning that the negligence of the

[12] Louisville & Nashville R. Co. *v.* Central Stock Yards Co., 212 U. S. 132, 29 Sup. Ct. 246.

[13] Attorney General *v.* Old Colony R. Co., 160 Mass. 62, 35 N. E. 252.

[14] For all that appears, an even balancing of debits and credits might have existed between the railroads in question in either the case in note 12, where the legislature attempted to compel a reciprocal lending of cars, or that in note 13, where the regulation provided for the interchangeability of mileage.

[15] In the principal case three companies were under the act. A case may be supposed where one company operating between the other two would get practically all transfers and no fares.

[16] Chicago City R. Co. *v.* City of Chicago, 142 Fed. 844. An oral decision *contra* to the principal case but citing no authorities.

house-owner is the cause. 4 BLACKSTONE'S COMMENTARIES, 226. Any such consideration is wholly inconsistent with the basic theory of the criminal law, that the state is the party plaintiff. *Reg.* v. *Kew*, 12 Cox C. C. 355. And where, with equal carelessness, a door or window was left unlocked, but wholly closed, one who entered was convicted of burglary. *May* v. *State*, 40 Fla. 426, 24 So. 498. Also where the breaking consisted of merely tearing out a twine lattice-work. *Commonwealth* v. *Stephenson*, 8 Pick. (Mass.) 354. Nor is there in fact any invitation held out by such negligence. But see *Timmons* v. *State*, 34 Oh. St. 426, 427. The probable explanation is that an artificial distinction was taken *in favorem vitæ*, at a time when burglary was a capital offense. Logically, widening an opening, not large enough to admit the defendant, by pushing up a window, or sliding back a door, is the forcible removal of an obstacle to entering, and a breaking of a part of the dwelling-house relied on as a security against intrusion. See *Metz* v. *State*, 46 Neb. 547, 553, 65 N. W. 190, 192; *State* v. *Boon*, 13 Ired. 244, 246. There is a growing tendency to follow the view expressed in the principal case. *Claiborne* v. *State*, 113 Tenn. 261, 83 S. W. 352; *State* v. *Sorenson*, 138 N. W. 411 (Ia.).

CARRIERS — PASSENGERS: WHO ARE PASSENGERS — RIDING WITH FRAUDULENT TICKET BEFORE IT HAS BEEN COLLECTED. — The plaintiff obtained a ticket on the defendant railroad at a reduced rate by falsely representing himself to be a commercial traveler. He was injured by the defendant's negligence, before the ticket was taken up by the conductor. *Held*, that he can recover. *Ashbee* v. *Canadian N. Ry. Co.*, 25 West. L. R. 884 (Sask.).

The relation of carrier and passenger is consensual in character, requiring that the parties should mutually assent to its creation. See *Webster* v. *Fitchburg R. Co.*, 161 Mass. 298, 299, 37 N. E. 165, 166. The express assent of the carrier is often evidenced by the collection of a ticket or cash fare from the party presenting himself for transportation. *Illinois C. R. Co.* v. *Treat*, 179 Ill. 576, 54 N. E. 290. But if such assent is obtained by fraud, the wrongdoer cannot make it the foundation of a right of action. *Fitzmaurice* v. *New York, N. H. & H. R. Co.*, 192 Mass. 159, 78 N. E. 418; *Way* v. *Chicago, R. I. & P. R. Co.*, 64 Ia. 48, 19 N. W. 828. The carrier's assent to the creation of the relationship is implied, where the applicant exactly complies with the terms of the general outstanding invitation to the traveling public. *Webster* v. *Fitchburg R. Co.*, *supra*; *St. Louis & S. F. S. R. Co.* v. *Kilpatrick*, 67 Ark. 47, 54 S. W. 971. This invitation is limited to those who intend to become *bonâ fide* passengers. Thus it is generally held not to include travelers trying to steal a ride, even though they may be prepared to pay fare if compelled to. *Wynn* v. *City & S. Ry. Co.*, 91 Ga. 344, 17 S. E. 649; and see *Chicago, R. I. & P. R. Co.* v. *Moran*, 117 Ill. App. 42, 45. Upon similar reasoning it would seem that the invitation was not extended to a traveler such as the plaintiff in the principal case, since he did not intend to pay the proper fare unless his fraud were discovered. It follows that the defendant owed him no duty of due care.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — ASSAULT BY ANOTHER PASSENGER — CONDUCTOR ASKING PASSENGER'S ASSISTANCE. — The plaintiff while a passenger on the defendant's train, went at the request of the conductor to help restrain an intoxicated passenger who had been wandering through the coaches and resisting efforts to keep him from jumping from the train. The conductor left the plaintiff, who was thereafter assaulted by the intoxicated man. *Held*, that the direction of a verdict for the defendant was correct. *Spinks* v. *New Orleans, M. & C. R. Co.*, 63 So. 190 (Miss.).

For a discussion of the principles involved, see NOTES, p. 376.

CONFLICT OF LAWS — SITUS FOR PURPOSE OF GRANTING ADMINISTRATION — STOCK IN CORPORATION. — The testator died domiciled in Bermuda leaving